

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,779

)

Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying him reimbursement for expenses relating to attendance at a prior fair hearing requested by the petitioner. The petitioner also seeks review of the denial of his preliminary motion to change the site of the hearing from that which would ordinarily be assigned and the denial of the petitioner's requests for subpoenas in this matter. The following proposed findings are based upon evidence taken at hearing and communications to the Board based upon the petitioner's request to include those other documents.

FINDINGS OF FACT

1. On June 19, 1995, the petitioner filed a request for reimbursement of his expenses in connection with Fair Hearing No. 13,318, scheduled in Hartford, Vermont on May 11, 1995. (Exhibit No. One.) The petitioner requested \$20.00 for his mileage which he described as an eighty mile round trip from Chelsea, Vermont. He also requested \$75.00 as reimbursement for two hours of his time. An explanation of his request was also included on the request form as follows:

Claimant was instructed by HSB to incur this travel at the states' expense while aware that another site was available only 45 miles distant (Round trip) and preferred by claimant where no time is charged to the state.

HSB instruction to incur this travel was also responsive to indication that claimant was available to another location (St. Albans) without any expense to the state due to St. Albans being incidental to other personal travel.

HSB is needlessly inconveniencing the people while increasing costs and expenditures.

This claim is without waiver of additional claims to be submitted on account of to-days trip, including telephone charges incurred when state refused to accept collect calls, and other potential consequential damages.

2. The petitioner's request for reimbursement was mailed to the operations office by the District Director who reported that the petitioner did not attend the hearing. (Exhibit No. Two.) The request was denied by the Operations Chief in a letter dated June 28, 1995. (Exhibit No. Three.) The reasons for the denial were that the petitioner had failed to attend the hearing for which he sought travel reimbursement and that reimbursement can only be made for mileage to fair hearings not for time spent attending those hearings under Department regulations.

3. On June 30, 1995, the petitioner sent a reply letter to the Operations Chief claiming that he had appeared for the hearing but was prevented from attending by personnel in the Hartford District office. (Exhibit No. Four.) For his trouble of providing this information, the petitioner submitted a second bill for his time requesting \$37.50. (Exhibit No. Five.) He also advised the operations chief that his failure to pay the claims within fourteen days would be "considered a denial thereof and civil action will likely be taken against you personally, along with various other individuals of your agency, under Title 42 the (sic) United States Code, Section 1983."

4. On July 5, 1995, the operations chief denied the second claim for reimbursement because "there is no basis to approve a claim for time spent refuting a claim decision." (Exhibit No. Six.) The operations chief also disagreed with the petitioner's characterization of his non-attendance at the hearing as resulting from actions by the Department to impede his access to the hearing. His non-attendance was characterized by the operations chief as the petitioner's choice.

5. On July 12, 1995, the petitioner appealed the Department's decision to the Human Services Board by way of a letter. (Exhibit No. Seven.) In that letter, the petitioner, citing Fair Hearing Rule 4 , paragraph 2, requested that the appeal be set in the Barre District as that "is the one routinely convenient to the appellant." He advised the Board that any hearing scheduled in another district, one that would not be convenient to the appellant, will require appellant be supplied with transportation thereto.

6. On July 13, 1995, a notice was mailed to the petitioner setting the hearing in White River on August 8, 1995. In response to that notice, the petitioner obtained subpoenas signed in blank by a court clerk and served the hearing officer with a subpoena to appear and testify at the hearing on August 8, 1995. (Exhibit No. Eight.) A similar subpoena was served on the Board Clerk, Janice Guy. (Exhibit No. Nine.)

7. On July 18, 1995, the hearing officer sent a memo to the petitioner and the Department's attorney stating that the subpoenas he issued were not valid before the human services board and advising him as to how subpoenas could be obtained. (Exhibit No. Ten.) The hearing officer also told the parties that she had denied the petitioner's request to set the hearing in Barre because the Board has already determined that Hartford was the appropriate office for serving the petitioner and that no hardship existed for him to go there. The petitioner was advised that he could be reimbursed for travel expenses to Hartford and that he could appeal the hearing officer's decision directly to the Board.

8. The petitioner responded to the hearing officer's rulings by disagreeing that the subpoenas he issued were invalid and advising the hearing officer that her failure to appear as his witness would subject her to contempt and statutory penalties. (Exhibit No. Eleven.) He also disagreed that the Board's prior order mandated that his hearings be set at the Hartford District office.

9. The hearing on this matter was held at the Hartford District Office on August 8, 1995, and was attended by the petitioner. The Department introduced the documents set forth in paragraphs one through four above, presented a review letter from the Commissioner (Exhibit No. Twelve) and offered

the testimony of the operations chief.

10. The operations chief testified, and his testimony is found to be credible, that he denied the petitioner's requests for reimbursement for mileage because he was advised by the District Director that the petitioner came to the District office early but left before his hearing was scheduled. He denied the request for reimbursement for time spent driving to Hartford and writing an explanatory letter because there are no provisions in the regulations which allow payment for time expended by petitioners in the hearings process.

11. The petitioner indicated that he might want to subpoena the District Director to rebut the charge that he had not attended the hearing. The Department opposed that request because a finding was about to be made by the Board as to what happened at that hearing. The Department asked the hearing officer to take judicial notice of the Board's finding in that hearing with regard to the petitioner's attendance at the hearing and to be bound by it. The hearing officer agreed to do so.

12. At the conclusion of the Department's case, the petitioner was asked if he wished to put on evidence rebutting the Department's case on the merits. In response, the petitioner asked to put the subpoena he had issued to the hearing officer into evidence. The hearing officer told the petitioner that she would take judicial notice of all the subpoenas and preliminary documents he had sent to the Board on the scheduling issue and that everything would be sent to the Board. The Department did not object to the hearing officer's ruling. In spite of the hearing officer's agreement to make all the petitioner's submissions to the Board part of the record, the petitioner persisted in attempting to introduce the documents into evidence instead of putting on any rebuttal evidence on the merits. When it became clear that the petitioner did not intend to comply with the hearing officer's request that he present rebuttal evidence to the case on the merits the record was closed. 13. Sometime around August 10, 1995, the petitioner mailed notices to the hearing officer and the Board clerk at their home addresses stating that the petitioner had commenced an action in Windsor Superior Court against them seeking enforcement of the subpoenas, compulsion of testimony, contempt, forfeitures and a writ of mittimus. (Exhibits No. Thirteen and Fourteen.) The petitioner then mailed a notice to the hearing officer and the clerk that the matter was scheduled for a hearing on Tuesday, August 22, 1995 at the Windsor Superior Court. (Exhibit No. Fifteen.) A motion to dismiss was filed on behalf of the hearing officer and Board Clerk. (Exhibit No. Sixteen.) After a hearing the motion to dismiss was granted by the Superior Court. (Exhibit No. Seventeen.)

14. On August 23, 1995, the petitioner filed a request asking that the hearing officer issue and serve subpoenas on herself and the Board clerk in connection with both Fair Hearings No. 13, 318 and 13,779. (Exhibit No. Eighteen.) Those requests were denied because they were filed long after the evidence had been closed in both hearings and were, thus, untimely and because there was no relevant evidence the hearing officer or clerk could give on the issue of setting the hearing since the ruling was made strictly on the basis of a prior legal decision by the Board. (Exhibit No. Nineteen.)

15. The Board issued its decision in Fair Hearing No. 13,318 originally scheduled for May 11, 1995, on August 23, 1995. (Exhibit No. Twenty.) In that decision the Board found that the petitioner had failed to attend his hearing scheduled for that day and dismissed his appeal. It must, therefore, be found for purposes of this hearing that the petitioner did not attend his hearing on May 11, 1995, for which he seeks mileage reimbursement.

ORDER

The Department's decision to deny reimbursement to the petitioner for expenses relating to his attendance at Fair Hearing No. 13,318 is affirmed.

REASONS

The Fair Hearing Rules promulgated by the Human Services Board pursuant to 3 V.S.A. 3091(d) provide that

Except in cases involving licensure issues, if the hearing is held outside the town of residence of the appellant, the agency shall pay the appellant's reasonable travel expenses.

HSB Fair Hearing Rule 5

Procedures adopted by the Department for payment of transportation to fair hearings provide as follows:

9. If the fair hearing is not held in the client's town of residence, or if the client has special transportation needs as defined at P-2127 C, help the client to get reimbursement for transportation costs or to get transportation through the transportation broker.

P-2127B

P2127C further discusses transportation as follows:

1. Transportation for any applicant traveling by private auto will be paid if the client completes a Vermont Personal Expense Claim including the following information:

- name of person who provided transportation (it does not have to be the client)
- address of person who provided transportation
- Social Security Number of person who provided transportation
- Date expense was incurred
- Explanation of why expense was incurred
- Total mileage and cost, figured at rate of State employees' reimbursement
- Signature of person providing transportation; date
- Im supervisor's signature; date

Send claim to Accounts Payable, Administrative Services.

2. Alternatives for those with special transportation needs will be handled by the Transportation Broker, according to the following procedures:

- All clients requesting a Fair Hearing will be notified by the inclusion of a card stuffer with the fair hearing schedule that DSW will reimburse recipients for transportation costs. Text of the stuffer reads:

Notice to Social Welfare Clients

If you are appealing a decision made by the Department of Social Welfare, you can be paid back for your travel expenses if your Fair Hearing is held outside of the town where you live and you travel by car. Your Eligibility Worker will help you to fill out the forms.

If you have a special transportation need such as a lift equipped van or have no care and cannot find a ride to your hearing, call your Eligibility Worker of the District Director of your local Social Welfare office. Special transportation can be arranged, even if you live in the town where the hearing is held.

3. Special Transportation needs defined

A person is considered to have special transportation needs if he or she:

- does not have a car which is registered, inspected, and operating, or is legally, medically or otherwise incapable of driving his or her own vehicle,

or

- requires special vehicle equipment such as lifts, ramps, hand controls, and does not own such a vehicle,

or

- doesn't own a car, states that he/she is unable to borrow a vehicle or get a ride from a friend or relative,

and

- would be unable to attend the hearing unless transportation was provided.

The Eligibility Worker, on receipt of the request for special transportation, will:

- Evaluate the need for such transportation in terms of the criteria above

- Complete the DSW 160 . . . authorization. . .

- Advise the client that (s)he must contact the Broker to make further arrangements. The Broker will determine what is the most appropriate form of transportation, and bill the Medicaid Division for the cost, using the DSW 160FT, Vermont Public Transportation Association Fair Hearing Transportation.

The travel expenses referred to in the Board's

regulations are interpreted by the agency in its policy manual as requiring either the reimbursement of automobile expenses of the appellant or the provision of transportation to the fair hearing site. There is nothing in any regulation or policy which indicates that the term travel expense includes reimbursement for time spent traveling to or attending hearings. No written policies in the manual make reference to such a reimbursement. Neither is there any reference to reimbursement for time spent refuting a decision by the Department or for any activity unrelated to transportation to the site of the fair hearing.

The language in the above reimbursement policy also makes it clear that travel expenses are paid for the purpose of attending fair hearings. Paragraph three above explicitly requires that an appellant show that he "would be unable to attend the hearing unless transportation was provided" before special transportation needs can be met. The whole thrust of the Board's rules is to govern the conduct of fair hearings. To read the Board's rule to require the payment of "appellant's reasonable travel expenses" for any purpose other than to attend a fair hearing is irrational.

In this case, the petitioner did not attend the fair hearing scheduled for him on May 11, 1995. According to Fair Hearing No. 13,318, the hearing officer was there and ready to proceed with his hearing. Although the petitioner may have gone to the district office that day, the regulations do not authorize payment for any reason other than attendance at the requested fair hearing. Therefore, the Department's decision should be affirmed.

RULINGS ON PRELIMINARY MATTERS

I. Request to Change the Hearing Site

The petitioner's hearing was set at the White River Junction office based upon the Board's finding in Fair Hearing No. 12,491 that the White River office was the appropriate office to serve the petitioner, including his fair hearing requests. The Board found in that case that there was no hardship for the petitioner to be served by that office and that, in spite of his claims to the contrary, he was not significantly inconvenienced by using that district. The Board specifically noted that any need to attend a fair hearing at that site could be reimbursed. The Board's decision was upheld in Polewsky v. Department of Social Welfare, Docket No. 94-487 (Vt. Aug. 8, 1995) wherein the Supreme Court noted that the petitioner had failed to show any "compelling or extraordinary circumstances that would warrant retaining jurisdiction over his case in the Barre office."

Fair Hearing Rule 2, cited by the petitioner, requires that the hearing shall be set "within a district convenient to the appellant." The Board and Court have already found that the White River Junction office is convenient for the petitioner. It may not be the most convenient for the petitioner, as he argues, but that is not the applicable standard. His request to change the site without any allegation of changed circumstances was summarily denied.

II. Denial of Requests for Subpoenas

In spite of the fact that the petitioner was specifically informed over two weeks before the August 8 hearing of the procedure used to request subpoenas before the Board, he did not request subpoenas until August 23, over two weeks after the evidence had been closed in his case.

In addition, the parties subpoenaed (the hearing officer and the Board clerk) had no relevant testimony to give at the hearing with regard to the site chosen for the hearing. It is clear in the record and from the

hearing officer's written ruling that the hearing had been set in White River Junction based on the Board's prior order.

The subpoenas were denied due to lack of timeliness and lack of relevance. The Supreme Court specifically noted in Polewsky v. Department of Social Welfare, *supra* that the hearing officer (acting for the Board Chairman) has the discretion under Fair Hearing Rule 6 and 3 V.S.A. § 809 to deny requests for subpoenas. The petitioner has shown no abuse of that discretion.

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